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ADJUDICATIONS STAFF

**UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION**

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
Entergy Nuclear Vermont Yankee, LLC)	Docket No. 50-271-LR
and Entergy Nuclear Operations, Inc.)	ASLBP No. 06-849-03-LR
)	
(Vermont Yankee Nuclear Power Station))	

ENERGY'S MOTION FOR CLARIFICATION

Pursuant to 10 C.F.R. § 2.323(a),¹ Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc. (collectively "Entergy") respectfully request clarification of an apparent inconsistency in the schedule set forth in the Atomic Safety and Licensing Board's ("Board") Partial Initial Decision LBP-08-25 issued on November 24, 2008 ("Decision"). The apparent inconsistency relates to the schedule for further actions following Entergy's submittal of confirmatory environmentally assisted fatigue ("CUFen") calculations for the Core Spray ("CS") and Reactor Recirculation ("RR") outlet nozzles at the Vermont Yankee Nuclear Power Station.

The nature of the apparent inconsistency is as follows. At one point in its Decision, the Board states:

Assuming Entergy still wishes to pursue this license renewal, it must (1) recalculate the CUFen analyses for the CS and RR outlet nozzles, in accordance with the ASME Code, NUREG[CR-]6583 and 5704, and all other regulatory guidance, (2) resubmit these results to the NRC Staff and serve them on the other parties herein, and (3) either demonstrate that the TLAA's [Time Limited Aging Analyses] are less than unity or submit an adequate AMP [Aging Management Plan] for these components. At that point we presume (but do not

¹ 10 C.F.R. § 2.323(a) provides: "(a) Presentation and disposition. All motions must be addressed to the Commission or other designated presiding officer. A motion must be made no later than ten (10) days after the occurrence or circumstance from which the motion arises. All written motions must be filed with the Secretary and served on all parties to the proceeding."

and cannot order) that the NRC Staff will evaluate Entergy's submissions. Presumably NEC [New England Coalition] will do the same.

If the CUFen analyses are (1) done in accordance with the above stated guidance and the basic approach used in the Confirmatory CUFen Analysis for the FW [Feedwater] nozzle, (2) contain no significantly different scientific or technical judgments, and (3) demonstrate values less than unity, then this adjudicatory proceeding terminates. If not, NEC may file a new or amended contention challenging the adequacy of the CUFen calculation, or, if Entergy chooses to proceed under the AMP route, NEC may revitalize dormant Contention 2 (as to the adequacy of Entergy's AMP). In light of these possible eventualities, our ruling today can only be a partial initial decision, and this ASLB proceeding will remain open until 45 days after Entergy performs the confirmatory CUFen analyses on the CS and RR nozzles, the NRC Staff approves them, and Entergy serves NEC and Vermont with full written results of such analyses. If no motion involving any such new, amended, or revitalized contention is filed by the 45th day, the adjudicatory proceeding on these matters shall be terminated.

Decision at 67-68 (emphasis added). However, in the "Conclusions" section of the Decision, the Board states:

Accordingly, the Board rules that our authorization to issue the license renewal is contingent upon, and the license renewal application cannot be granted unless and until, Entergy completes the confirmatory CUFen analyses on the core spray and reactor recirculation nozzles with satisfactory results without using the simplified Green's function methodology and makes those analyses available for review by the NRC Staff and the other parties herein. The record will be held open with regards to Contentions 2A and 2B, and Contention 2 will be held in abeyance until 45 days after those events occur.

Id. at 151-52, emphasis added.

The earlier quote suggests that the instant proceeding will remain open until 45 days after Entergy performs the calculations, the NRC Staff ("Staff") approves them, and Entergy serves on the other parties the results of the calculations. The quote in the Decision's Conclusion, however, states that the proceeding will remain open for 45 days after Entergy performs the calculations and serves them on the Staff and the other parties, without requiring Staff approval during the 45-day period.

Entergy respectfully requests that the Board issue an Order addressing this scheduling issue. In our view, the schedule set forth in the Decision's Conclusion is the appropriate one. The Board recognizes that it "presume[s] (but do[es] not and cannot order) that the NRC Staff will evaluate Entergy's submissions." Decision, slip op. at 67. Whether and on what schedule the Staff will review and approve the new calculations cannot be either dictated or predicted by the Board or the parties. Keeping the proceeding open for an indefinite period of time would be inconsistent with the orderly conduct and ultimate conclusion of this proceeding, and would be detrimental to Entergy's right to obtaining a timely final decision on its license renewal application.

In addition, it is beyond dispute that the "focus of a hearing on a proposed licensing action is the adequacy of the application to support the licensing action, not the nature of the NRC Staff's review." Dominion Nuclear Connecticut, Inc. (Millstone Power Station, Unit 3), CLI-08-17, 68 N.R.C. ___ (2008), slip op. at 8; Pa'ina Hawaii, LLC, CLI-08-3, 67 N.R.C. 151, 168 n.73 (2008). Any deficiencies that another party may wish to raise with respect to Entergy's new calculations must be based on the adequacy of the calculations themselves and not on whether the Staff approves them.² Accordingly, there should be no need to await the Staff's approval of the calculations for contentions to be filed challenging them.

CONCLUSION

For the above-stated reasons, Entergy respectfully requests that the Board clarify the schedule for closing this proceeding and that it rule that the proceeding will remain open for 45 days after Entergy performs the confirmatory CS and RR nozzle calculations and serves them on

² Indeed, the New England Coalition was able to gain admittance of a new Contention 2B that challenged Entergy's CUFen "confirmatory analysis" of the feedwater nozzle, even though that analysis had been found acceptable by the NRC Staff. See Final Safety Evaluation Report (February 2008) Staff Exh. 1, Section 4.3.3.2 at 4-43; Order (Granting Motion to Amend NEC Contention 2A) (April 24, 2008).

the Staff and the other parties, so that any contentions challenging such calculations must be submitted within that 45 day period.

CERTIFICATION

As required by 10 C.F.R. § 2.323(b), counsel for Entergy certifies that he has consulted with the other parties in connection with this Motion. NEC does not oppose Entergy's filing of the Motion but does not concur with Entergy's position on its substance. The NRC Staff, the Vermont Department of Public Service and the Commonwealth of Massachusetts do not oppose the filing of the Motion, but reserve the right to evaluate and respond to the Motion as appropriate. The State of New Hampshire has taken no position on the Motion.

Respectfully Submitted,



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Dated: December 4, 2008

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Entergy's Motion for Clarification" were served on the persons listed below by deposit in the U.S. Mail, first class, postage prepaid, and where indicated by an asterisk by electronic mail, this 4th day of December, 2008.

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